

steamboat, evidence that on prior and subsequent days sparks of large size escaped from the smokestack may be admissible to prove its defective construction, but opinionative evidence that having regard to the force and direction of the wind on the day in question sparks of this size if they escaped might have been carried to the building in question is too conjectural and speculative. Judgment of MEREDITH, C.J., affirmed.

Matthew Wilson, Q.C., for appellants. J. S. Fraser, for respondent.

From Street, J.]

[March 27.

FLOER v. MICHIGAN CENTRAL RAILWAY COMPANY.

Trial—Jury—Failure to agree—Dismissal of action—Rule 780.

When in an action tried with a jury the presiding judge holds that there is evidence to submit to the jury and refuses a nonsuit, he cannot, upon the jury disagreeing, himself decide under Rule 780 in the defendant's favour upon his own view of the evidence. Judgment of STREET, J., 35 C.L.J. 416; 30 O.R. 635, affirmed.

D. W. Saunders, and J. Montgomery, for appellants. F. A. Anglin, for respondent.

From Street, J.]

[March 27.

HOOD v. COLEMAN PLANING MILL AND LUMBER COMPANY.

Principal and surety—Application of payments—Mechanic's lien.

The plaintiff, who was a director of a company for which the defendants were doing work, endorsed the company's note in the defendants' favour for part of the defendants' claim. The note was discounted by the defendants and was dishonoured and the holders obtained judgment against the plaintiff who did not, however, pay any part of the claim. Subsequently the defendants obtained, in mechanic's lien proceedings instituted by other creditors, a dividend of eighty-one cents on the dollar of their total claim including the portion covered by the note.

Held, that they were not bound to apply the amount received first in satisfaction of the portion of the claim covered by the note, nor entitled to apply it first in satisfaction of the portion of the claim not covered by the note, but were bound to apply it pro rata on the whole claim. Judgment of STREET, J., affirmed.

Washington, Q.C., for appellants. D'Arcy Tate, for respondent.

From Street, J.]

SCOTT v. MELADY.

[March 27.

Sale of goods—Statute of frauds—Delivery—Acceptance.

The defendants agreed to buy from the plaintiff ten thousand bushels of No. 2 red wheat, at \$1.12 per bushel, to be delivered f.o.b. a vessel to be provided by the defendants, who were to pay freight and insurance, and